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82-347

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1982

IN THE MATTER OF LEGISLATIVE
DISTRICTING OF THE STATE

C. LAWRENCE WISER,

Appellant

v.

HARRY R. HUGHES,

Appellee

ON APPEAL FROM THE COURT
OF APPEALS OF MARYLAND

APPENDIX TO JURISDICTIONAL STATEMENT

C. Lawrence Wiser
10605 Concord Street
Suite 400
Kensington, MD 20895
(301) 949-7870

Appellant

IN THE COURT OF APPEALS OF MARYLAND

Misc. Nos. 2 through 11

September Term, 1982

IN THE MATTER OF

LEGISLATIVE DISTRICTING

OF THE STATE

Murphy, C.J.
Smith
Eldridge
Cole
Davidson
Rodowsky
Couch,
J.J.

PER CURIAM ORDER

Filed: June 4, 1982

	*	In the
IN THE MATTER OF	*	Court of Appeals
LEGISLATIVE DISTRICTING	*	of Maryland
OF THE STATE	*	Misc. Nos. 2 through 11
	*	September Term 1982

PER CURIAM ORDER

WHEREAS, petitions were filed by various registered voters of the State with this Court as authorized by Section 5 of Article III of the Constitution of Maryland challenging the constitutionality of the 1982 Legislative Districting Plan which was approved and became law on February 26, 1982; and

WHEREAS, this Court appointed a Special Master to schedule hearings and to submit his findings of fact and conclusions of law to the Court; and

WHEREAS, this Court has considered the

findings and conclusions of the Special Master, the exceptions filed thereto and the oral arguments of the parties and amici curiae presented in support of their respective positions; now, therefore, it is this 4th day of June, 1982

ORDERED, by the Court of Appeals of Maryland, a majority of the Court concurring, that for reasons to be set forth in an opinion later to be filed, the petitions challenging the 1982 Legislative Districting Plan (House Joint Resolution No. 32) having failed to establish any violations of the federal constitution or the Constitution of Maryland, the exceptions to the Special Master's report taken by the State be, and they are hereby, sustained and all other exceptions are hereby overruled, and the legislative districts of the State shall be as established in and by House Joint Resolution No.

32; and it is further

ORDERED, that pursuant to the provisions of Section 5 of Article III of the Constitution of Maryland, the provisions of Section 9 of Article III of the Constitution shall govern the age, citizenship and residency requirements for election of Senators and Delegates to the General Assembly of Maryland except that for the primary and general elections of 1982, only, any person seeking election as a Senator or Delegate must have resided in the district which he or she seeks to represent not later than July 6, 1982.

/s/ Robert C. Murphy
Chief Judge

In the Matter of the Legislative Districting of the State 1982	* * * * * *	In the Court of Appeals of Maryland

TO THE HONORABLES, CHIEF JUDGE MURPHY AND THE ASSOCIATE JUDGES OF THE COURT OF APPEALS OF MARYLAND

REPORT OF THE SPECIAL MASTER

History of the Legislative Plan

A brief summary of the sequence of activities leading to eventual passage of H.J.R. 32 may be of value to the Court.

On April 13, 1981, Governor Harry Hughes appointed an Advisory Committee on Reapportionment (hereafter Advisory Committee) with the Honorable William S. James as Chairman, and with Senate President, James Clark, Jr.; House Speaker, Benjamin L. Cardin; Dr. C. Vernon Gray, a professor at Morgan State University; and Barbara Fetterhoff, a Republican and a member of the League of Women Voters, as Members.

The Advisory Committee conducted seventeen hearings in all parts of the State (see Minutes, Exhibit 1 P) between May 19, 1981 and December 8, 1981, and heard the testimony of 213 persons (see: Affidavit of James, Exhibits 2 H). Guidelines were adopted; legislative input was requested and a maximum standard of plus or minus 5% population deviation fixed (Exhibit 2 H).

For planning purposes, the State was divided into five regions; (1) Eastern Shore Planning Area (Eastern Shore and Harford County), 5 districts; (2) Baltimore City Planning Area, 9 districts; (3) Baltimore County Planning Area, 7 districts; (4) Central and Western Maryland Planning Area (the 5 Western Maryland Counties, Montgomery County, a small portion of Baltimore County and the excess population from Southern Maryland), 13 districts; (5) Central and Western Maryland

Planning Area (Southern Maryland and most of Anne Arundel and Prince George's Counties, 13 districts).

The Advisory Committee made this brief summary of its labors:

> "The Committee plan is entirely consistent with its goal of substantial population equality.
>
> No senatorial district contains a population deviation of + 5%. Although it was constitutionally impossible to maintain all county lines, the Committee strove to keep intact all municipal lines to fashion compact and contiguous districts. Finally, the Committee's Plan does not dilute existing minority strength and, in fact, in some cases augments that strength." (Affidavit of James, Exhibit 2 H, p. 3).

The Report of the Advisory Committee may be found in the Maryland Register, Part II, Vol. 8, Issue 25, dated 2/11/81, pp. 1-94 incl. (Exhibit 2 P).

Subsequent to the filing of the Report of the Advisory Committee, Governor Hughes conducted a hearing on December 21, 1981,

at which 24 witnesses spoke concerning redistricting in many State areas (see: Minutes, Exhibit 1 D-B); and on December 23, 1981, at which 46 witnesses addressed the issue of redistricting. (See: Minutes, Exhibit 1 D-C).

Governor Hughes adopted most of the recommendations of the Advisory Committee but did not do so with respect to 13A, 14A, and 14B (see: Affidavit Ex. 1 D).[1]

Federal and State constitutional questions are raised in all petitions filed in the subject proceedings. In the light of this fact and to avoid repetition of quotations from decided cases in the seriatum consideration of the several petitions, this report will discuss the decided cases believed to be controlling on the constitutional issues in accordance with the following outline:

1. United States Constitution

   a. Population equality

b. Freedom from invidious discrimination

2. Maryland Constitution.

United States Constitution

Population Equality

The seminal case concerning the constitutional power of the Federal Courts to control State action in the establishment of legislative districts within its borders is Baker v. Carr, 369 U.S. 186 (1962).

In Baker v. Carr, Mr. Justice Brennan, speaking for the Court, declared at page 197:

> "(W)e hold today only (a) that the court possessed jurisdiction of the subject matter; (b) that a justiciable cause of action is stated upon which appellants would be entitled to appropriate relief; and (c) because appellees raise the issue before this Court, that the appellants have standing to challenge the 'Tennessee apportionment statutes.'"

The Supreme Court did not reach the merits of the cause, being content to declare that an adequate complaint had been filed.

Justice Frankfurther's dissent (joined only by Mr. Justice Harlan) declared that "The Court today reverses a uniform course of decision"[2] and stated that historically, "The Court has been particularly unwilling to intervene in matters concerning the structure and organization of the political institutions of the States";[3] distinguished the cases involving black disfranchisement;[4] stated tnat courts are not fit instruments of decision in "the composition of those large contests of policy traditionally fought out in non-judicial forums, by which governments and the actions of government are made and unmade";[5] and particularly was critical of the Court's failure to

"vouchsafe the lower courts - State and federal - guidelines for formulating specific, definite, wholly unprecedented remedies for the inevitable litigations that today's umbrageous disposition is bound to stimulate in connection with politically motivated reapportionments in so many States."[6]

The first Supreme Court progeny explicating Baker v. Carr, not directly related to legislative redistricting, applied its holdings as to jurisdiction, justiciability and standing to State nominating procedures[7] and to State congressional redistricting,[8] and required population equality in all elections within the State.

Justice Frankfurter's forecast "of inevitable litigations" proved prophetic. In the course of 2-1/4 years following the decision in Baker v. Carr, a frenzy of

legislative and judicial activity occurred throughout the United States, culminating in six guideline decisions of the Supreme Court filed on June 15, 1964.

The leading case was Reynolds v. Sims, 377 U.S. 533, in which the Supreme Court held unconstitutional three Alabama legislative reapportionment plans. Under the existing plan, 25.7 percent of the state's population lived in counties which could elect a majority of the house, and 25.1 percent lived in senatorial districts electing a majority of the state senate. Under a proposed constitutional amendment, 43 percent of the state's population would live in counties electing a majority of the house, and only 19.4 percent of the state's population would elect a majority of the state senate. Under "standby" legislation, 37 percent of the state's population would elect a majority of the house, while 27.6

percent would elect a majority of the senate.

In rejecting these plans, the Court made the following holdings:

> "We hold that, as a basic constitutional standard, the Equal Protection Clause requires that the seats in both houses of a bicameral state legislature must be apportioned on a population basis. Simply stated, an individual's right to vote for state legislators is unconstitutionally impaired when its weight is in a substantial fashion diluted when compared with votes of citizens living in other parts of the State."
>
> (At p. 568.)

It noted that it is a practical impossibility to arrange legislative districts so that each one has an identical number of residents. What the Equal Protection Clause requires of the states, it said, is "an honest and good faith effort to construct districts, in both houses of its legislature; as nearly of equal population as is practicable." At 577.[9]

The definitive case explicating the permissible deviation from population equality in state legislative redistricting is Mahan v. Howell, 410 U.S. 315 (1973). In Mahan, supra, a four-judge District Court, relying on Kirkpatrick v. Preisler, 394 U.S. 526; Wells v. Rockefeller, 394 U.S. 542, and Reynolds v. Sims, supra, concluded that a maximum 16.4% variation in the legislative redistricting of Virginia required it to declare the legislative reapportionment statutes unconstitutional. In reversing the District Court, the Supreme Court explained that its decisions in Kirkpatrick, supra, and Wells, supra, dealt with congressional districting under the command of Article 1, Section 2 of the United States Constitution. Therefore, "(t)he principal question . . . presented for review is whether or not the Equal Protection Clause of the Fourteenth Amendment likewise

permits only 'the limited population variances which are unavoidable despite a good faith effort to achieve absolute equality' in the context of state legislative reapportionment." (410 U.S. at 320; footnote omitted.) It concluded that

> "the constitutionality of Virginia's legislative redistricting plan was not to be judged by the more stringent standards that Kirkpatrick and Wells make applicable to congressional reapportionment, but instead by the equal protection test enunciated in Reynolds v. Sims, supra . . . . We . . . reaffirm its conclusion that '(s)o long as the divergences from a strict population standard are based on legitimate considerations incident to the effectuation of a rational state policy, some deviations from the equal-population principle are constitutionally permissible with respect to the apportionment of seats in either or both of the two houses of a bicameral state legislature.' Id. at 579.[10]

Using this more flexible standard, the Court held that since the people of Virginia had decided to grant the General Assembly the power to enact local

legislation dealing with political subdivisions, the General Assembly's policy of maintaining the integrity of traditional county and city boundaries in drafting legislative district lines was constitutionally valid and that this policy was indeed furthered by the plan adopted by the legislature. The only remaining question was whether the population divergences resulting from the plan were within tolerable limits. On this point, the Court noted:

> "There was uncontradicted evidence offered in the District Court to the effect that the legislature's plan, subject to minor qualifications, 'produces the minimum deviation above and below the norm, keeping intact political boundaries . . . .' (Defendants' Exhibit 8.)" At 326.

The Court concluded that these population disparities did not exceed constitutional limits.

"Neither courts nor legislatures are furnished any specialized calipers that enable them to extract from the general language of the Equal Protection Clause of the

Fourteenth Amendment the mathematical formula that establishes what range of percentage deviations is permissible, and what is not. The 16-odd percent maximum deviation that the District Court found to exist in the legislative plan for the reapportionment of the House is substantially less than the percentage deviations that have been found invalid in the previous decisions of this Court. While this percentage may well approach tolerable limits, we do not believe it exceeds them. Virginia has not sacrificed substantial equality to justifiable deviations.

". . . We, therefore, hold the General Assembly's plan for the reapportionment of the House of Delegates constitutional and reverse the District Court's conclusion. . . ." At 329.

There having been no subsequent deviation from the rule announced in Mahan v. Howell, supra, it is plain that decisions in congressional redistricting litigation

simply are irrelevant insofar as population equality is concerned.

(b). Invidious Discrimination

The Supreme Court has held that invidious discrimination must be avoided against racial or ethnic minorities. Gomillion v. Lightfoot, 364 U.S. 339, 81 S.Ct. 125 (1960); Wright v. Rockefeller, 376 U.S. 52, 84 S.Ct. 603 (1964); White v. Regester, 412 U.S. 755, 93 S.Ct. 2332 (1973); Whitcomb v. Chavis, 403 U.S. 124, 91 S.Ct. 1858 (1971); Chapman v. Meier, 420 U.S. 1, 95 S.Ct. 751 (1975); City of Mobile, Ala. v. Bolden, 446 U.S. 55, 100 S.Ct. 1490 (1980). It has also afforded this same protection to political groups. City of Mobile, Ala. v. Bolden, supra; Chapman v. Meier, supra; Gaffney v. Cummings, 412 U.S. 735, 93 S.Ct. 2321 (1973); Whitcomb v. Chavis, supra; Reynolds

v. Sims, supra.

The Constitution of Maryland

Article III, Section 4 of the Constitution of Maryland reads as follows:

> "Each legislative district shall consist of adjoining territory, be compact in form, and of substantially equal population. Due regard shall be given to natural boundaries and the boundaries of political subdivisions."

As previously shown, State action in applying and interpreting the above provisions of the Maryland Constitution is limited, restricted and constrained by the dual Federal constitutional imperatives of (a) "one person - one vote"; and (b) "freedom from invidious discrimination."

So, too, must State action in their application and interpretation be undertaken in the light of other

imperatives imposed upon those provisions by Maryland Constitution Article III, Section 2 and 3 that read as follows:

> "Section 2.
>
> The membership of the Senate shall consist of forty-seven (47) Senators. The membership of the House of Delegates shall consist of one hundred forty-one (141) Delegates.
>
> Section 3.
>
> The State shall be divided by law into legislative districts for the election of members of the Senate and the House of Delegates. Each legislative district shall contain one (1) Senator and three (3) Delegates. Nothing herein shall prohibit the subdivision of any one or more of the legislative districts for the purpose of electing members of the House of Delegates into three (3) single-member delegate districts or one (1) single-member delegate district and one (1) multimember delegate district."

Compactness

The Supreme Court has clearly stated that a State may "legitimately desire to maintain the integrity of various political

subdivisions, insofar as possible, and provide for compact districts of contiguous territory in designing a legislative apportionment scheme." Reynolds v. Sims, supra, 84 S.Ct. at 1390. This Maryland has done in Article III, Section 4 of its Constitution, which provides:

> "Each legislative district shall consist of adjoining territory, be compact in form, and of substantially equal population. Due regard shall be given to natural boundaries and the boundaries of political subdivisions."

Although facially the requirement that districts be "compact in form" appears to be a simple one, courts have almost uniformly recognized that the question of whether or not a Legislative District meets the constitutional test of "compactness" can only be answered in the context of the multiplicity of competing demands, some of imperative character, which legislatures

must consider in drawing an apportionment plan. So, any decision determining the meaning and effect of "compact" in the constitutional sense must be made in the light of the imperatives imposed by the United States Constitution, and the demands of priority, or limiting factors, imposed by the Maryland Constitution itself.

The paramount constraint under the Constitution of the United States is imposed by the Fourteenth Amendment. Baker v. Carr, supra, Reynolds v. Sims, supra, and Mahan v. Howell, supra, made crystal clear that all county, municipal or district lines, all natural or political subdivision boundaries, or the size and shape of any district must yield to the imperative that the State must make a good faith effort to create districts giving credit to the principle of one person - one vote, and must produce clear and convincing proof that any other than a slight

population deviation in its districting is the product of a rational state purpose.

Under the Constitution of Maryland, the General Assembly must consist of 47 Senators and 141 Delegates. Article III, Section 2. In addition, each Senatorial District shall provide one Senator and three Delegates (with an authorized but not compelled division into three single delegate districts or into one single member delegate district and one multimember delegate district. Article III, Section 3.) Finally, Section 4 of Article III requires that "due regard" be given to natural boundaries and the boundaries of political subdivisions. The constraining effect of this language in Section 4 must apply only to the provision of the "be compact in form" requirement of the section. This is so because: (1) the phrase "substantially equal population" constitutionally may be given no less

stringent effect than that imposed by Baker v. Carr, supra, and its progeny, and (2) the injunction that a district must "consist of adjoining territory" is one of precise definition as to which the "due regard" phrase is without meaning. Of course, a final constraint is that all districts bordering on the State line must conform thereto.

a. Population Equality as a Constraint on Compactness

The issue of paramount importance in any reapportionment plan is, of course, the achievement of substantial population equality. Thus, in Kirkpatrick v. Preisler, 394 U.S. 526, 89 S.Ct. 1225 (1969), the Supreme Court said:

> "Finally, Missouri claims that some of the deviations from equality were a consequence of

> the legislature's attempt to ensure that each congressional district would be geographically compact. However, in Reynolds v. Sims, supra, at 580, 84 S.Ct. at 1391, we said, 'Modern developments and improvements in transportation and communications make rather hollow, in the mid-1960's, most claims that deviations from population-based representation can validly be based solely on geographical considerations. . . . In any event, Missouri's claim of compactness is based solely upon the unaesthetic appearance of the map of congressional boundaries that would result from an attempt to effect some of the changes in district lines which, according to the lower court, would achieve greater equality. A State's preference for pleasingly shaped districts can hardly justify population variances." (Emphasis added.)

394 U.S. at 535-36; 89 S.Ct. at 1231.

b. Other Constraints on Compactness.

Numerous state courts have also recognized that compactness is a relative concept, to be measured only in the context of the competing demands which make up the "political thicket" of reapportionment. In

this regard the Supreme Court of Rhode Island in Opinion to the Governor, 221 A.2d 799, 101 R.I. 203 (1966), stated at p. 802:

> "The term 'compact' has no precise or exact meaning within the context of the constitutional mandate to divide the state into districts which shall be 'as compact in territory as possible.' County of Norfolk v. City of Portsmouth, 186 Va. 1021, S.E. 2d 136. While a division into tightly packed districts with regular lines might literally satisfy the constitutional requirement, our state with its irregular boundaries, its bays and its inlets, its islands, its rivers and lakes and its many other geographical features is obviously not susceptible to being divided into circular planes or squares. Moreover, the overriding requirement that the districts must be as nearly equal in population as possible would prevent the accomplishment of any such division.
>
> The term 'compact' then, as it is used in the constitution, has reference to a principle, rather than to a definition, and has meaning only within an appropriate factual context. Its origins as a constitutional requirement lie in an intention to provide an electorate with effective representation rather than with a design

to establish an orderly and symmetrical geometric pattern of electoral districts."

The Court added, at 803:

"We are persuaded then that the requirement for territorial compactness...was intended to be peripheral in its thrust and to leave to the legislature the question of determining the territorial structuring that will provide districts as compact as possible. In short, whether there has been a complete departure from the requirement for compactness is a judicial question, but the determination of the territory that necessarily would have to be included in a district to provide that that district be as compact as possible is for legislative determination. In People ex rel. Woodyatt v. Thompson, 155 Ill. 451, at page 480, 40 N.E. 307, at page 315, the court noted: 'There is a vast difference between determining whether the principle of compactness of territory has been applied at all or not, and whether or not the nearest practical approximation to perfect compactness has been attained. The first is a question which the courts may finally determine; the latter is for the legislature.'"

Similarly, the New Jersey Supreme Court has held that:

"Compactness is an elusive concept. We noted in Scrimminger

> v. Sherwin, supra, 60 N.J. at 498, 291 A.2d 134, that it may be of limited utility in creating legislative districts in the light of the odd configurations of our State and its municipalities. It has never been held to constitute an independent federal constitutional requirement for State legislative districts. Gaffney v. Cummings, supra, 412 U.S. at 752, 93 S.Ct. at 2331, 37 L.Ed.2d at 312, footnote 18. This Court has suggested that population equality is distinctly paramount to it and that where districts are created on the basis of existing political subdivisions, compactness becomes a much reduced factor. Jackman v. Bodine, 49 N.J. 406, 419, 231 A.2d 193 (1967)." Davenport v. Apportionment Commission, 319 A.2d 718, 722, 65. N.J. 125 (1973).[11]

In yet a third major decision, Schneider v. Rockefeller, 340 N.Y.S.2d 889, 31 N.Y.2d 420, 293 N.E.2d 67 (1972), the New York Court of Appeals discussed at some length the competing considerations which legitimately may impinge on compactness in legislative districts:

> "The term compact, ...has no precise meaning within the context of the constitutional

mandate. Moreover, the Constitution does not provide unqualifiedly for compactness. (Matter of Sherrill v. O'Brien, supra.) At a minimum the Legislature may, in good faith, take account of existing political subdivision lines, topography, means of transportation and lines of communication without violating this standard. (Matter of Sherill v. O'Brien, supra.) Particularly where cities are concerned, the requirement of practical numerical equality may necessitate boundaries that are ragged at best. Moreover, it is manifest that our State, with its irregular boundaries, its islands, rivers, lakes and other geographical features

is not susceptible of division into circular planes or squares. Thus, it might be said that the constitutional requirement of compactness is peripheral in its thrust, forbidding a complete departure, yet leaving to the determination and discretion of the Legislature the degree of compactness which is possible in the total representation picture." 340 NYS2d at 896.

These same concerns were recognized by the Supreme Court of Pennsylvania in Commonwealth ex rel. Specter v. Levin, 448 Pa. 1, 293 A.2d 15 (1972), where the

Court cautioned:

> "Before any apportionment plan can be attacked for lack of compactness it must be recognized that there is a certain degree of unavoidable non-compactness in any apportionment scheme. The population density of this state is quite uneven, and therefore attempts to achieve the overriding objective of substantial equality of population will ordinarily necessitate the drawing of districts that are not models of geometric compactness. In addition, attempts to maintain the integrity of the boundaries of political subdivisions will add another increment of unavoidable non-compactness. Thus, in the words of one commentator: 'Dragons, bacon strips, dumbbells, and other strained shapes are not always reliable signs that partisan (or racial or ethnic or factional) interests are being served...." (footnote omitted.)
>
> at 23

Two cases present seemingly contrary authority. See In re Legislative Districting of General Assembly, 193 N.W.2d 784, 790-91 (Iowa, 1972); Acker v. Love, 496 P.2d 75 (Colo., 1972). The Master is

convinced, however, that these cases are readily distinguishable.

In short, the constitutional requirement for compactness should be considered in the light of what must be its principal purposes-the assurance of mutually reasonable access between citizens and their representatives for exchange of views and the prevention of discriminatory districting.

The use of mathematical measures of compactness that relate solely to geographic configurations do nothing to achieve either such purpose and no court has adopted them. As is pointed out in the Affidavit of Professor H. Peyton Young (Exhibit 2A) these mathematical tests give excellent grades to some very strange configurations.

The latest final State decision upon

the constitutionality of State legislative redistricting is: In re Reapportionment Plan for the Pennsylvania General Assembly, 442 A.2d 661 (S.Ct. Pa. Dec. 29, 1981).

The decision is in full accord with the cases previously cited and quoted herein. The Court, after quoting from Lucas v. Colorado, supra, that "in determining whether a good faith effort to establish districts substantially equal in population has been made, a court must necessarily consider a State's legislative apportionment scheme as a whole," stated at 668:

> "None of the arguments presented by appellants convinces us that the drawing of district lines, which necessarily involves value judgments by the Commission, has been based upon impermissible considerations. Mere dissatisfaction with the fact that certain political subdivisions have been divided or have been included within particular legislative districts is not sufficient to invalidate the Final

ReapportionmentPlan as unconstitutional. Moreover, the Supreme Court of the United States has made clear that 'neither history alone, nor economic or other sorts of group interests, are permissible factors in attempting to justify disparities from population-based representation. Reynolds v. Sims, 377 U.S. at 579-80, 84 S.Ct. at 1391 (1964)."

See also Schrage v. State Board, 430 N.E.2d 483 (Ill. 1981).

MISCELLANEOUS PETITION 2
PETITION OF C. LAWRENCE WISER
MONTGOMERY COUNTY DISTRICTS

This Petitioner's attack would alter all districts and subdistricts within Montgomery County, namely 14A, 14B[12], 15, 16, 17, 18, 19 and 20.

His attack, mounted upon United States constitutional grounds alleges unconstitutional gerrymandering. His attack mounted upon Maryland constitutional grounds alleges violation of Article III, Section 4, in that (a) the Legislative Plan does not provide districts that are compact

in form; and (b) does not give due regard to natural boundaries and the boundaries of political subdivisions. He urges the additional ground, upon a somewhat ethereal unconstitutionality claim, an alleged failure to respect "communities of interest."

Except for the noted effect upon subdistrict 14B (see footnote), substitution of the Wiser Plan for the Legislative Plan would have no ripple effect upon districts beyond the borders of Montgomery County, unless such substitution was induced by the Court's acceptance of the Wiser theorum that the Legislative Plan was invalid by reason of the compactness requirements of Article III, Section 4 of the Constitution of Maryland, supra.

In the latter event the legislative plan would stand in jeopardy in Baltimore City, Baltimore, Howard, Anne Arundel, Calvert, St. Mary's, Charles, and all

counties of the Eastern Shore, where similar attacks grounded upon alleged lack of compactness have been made.

Unconstitutional Gerrymandering Under the Fourteenth Amendment

The sole evidential basis for the Wiser contention on the above ground is the fact that under the Legislative Plan the districts within Montgomery County have been constructed so that no more than one incumbent senator and three incumbent delegates have been placed in any single district.

The objectivity of Wiser on this ground is somewhat tarnished by the circumstances that (a) his own residence, under his own plan, is in a district with no incumbent senator; and (b) incumbents are forced into life and death election contests against each other by it.[13]

A serious question exists whether

challenge to a legislative districting plan upon the mere ground that it tends to minimize contests among present incumbents is justiciable.[14]

In any case, it seems clear that "districting for incumbents" does not per se establish invidious discrimination.[15]

Manifestly, formation of districts, otherwise constitutionally valid, wherein the electorate may choose between an incumbent and his challengers after full debate upon the political philosophy, competence and effectiveness of an incumbent thereby providing opportunity to the voters to re-elect or to reject, arguably serves a finer public purpose than the formation of districts, perhaps also otherwise constitutionally valid, wherein the electorate is given the Hobson's choice of being compelled to reject the services of one of two incumbents, both of whom the voter may

believe to be exceptionally able public servants.

No evidence is to be found in the record that "districting for incumbents" was the product of any plot, plan or scheme to diminish, dilute or cancel out the voting strength of any racial or political group. Neither is there any evidence that such is its effect.

There is no record evidence that the Legislative Plan conferred any special handicap or special benefit to any incumbent other than may have been earned in the performance of duty during his term of office.

Arguably, an incumbent properly should be permitted to receive the benefits stemming from his performance in office, or to suffer the handicaps occasioned by poor performance. His constituents properly should be permitted the opportunity, when possible, to make a judgment on the basis

of that performance without constraints imposed by districts proposing unnecessary contests between incumbents.

In the course of his final argument before the master, Petitioner Wiser (Misc. Petitioner 2) produced bi-color flash cards, allegedly depicting the effect upon his own and the legislative planned districts of the application of the several suggested "tests" for the determination of whether a district is "compact" in the constitutional sense. His apparent intention was to demonstrate that his plan was "better" than the legislative plan.

His flash cards, however, proved too much. Some showed that one or more of his own districts failed one or more of the very "tests" he urges the Court of Appeals to adopt for its determination of the meaning of "compact" in the constitutional sense.

Moreover, computer calculation of

Wiser District 18 shows it fails the suggested Reock test.[16] The computer calculation of Wiser District 17 shows it fails the suggested Schwartzberg test.

In addition, Wiser District 14 also fails the Schwartzberg test (See Exhibit 3A). This Petition should be dismissed.

(Decisions on other Petitioners relating to various parts of the State omitted)

Summary

I am persuaded that the Legislative Plan for the Redistricting of the State viewed as an entirety represents a good faith effort on the part of the State to meet all constitutional demands.

Some of the petitioners are requesting the Court of Appeals to do that which no Court in the United States has done - to bind itself to a suggested numbers game, a

game using numbers that admittedly are arbitrary and with not the slightest assurance that their use will produce fair representation, or freedom from invidious discrimination.

In the course of final argument, counsel for several petitioners spoke glibly about gerrymandering -- waving cut-outs of allegedly gerrymandered districts, yet with one exception[23], none was able to point to a single instance of discriminatory districting in the legislative plan.

Perhaps the most objective of all discussions of the theory and practice of fair representation and reapportionment, following Baker v. Carr, the late Professor Robert G. Dixon, exposed the invalidity of exalting form over substance when he wrote:

> "...all are familiar with the practice of devising odd-shaped districts for political advantage

- which is the historically derived and common popular usage of the term gerrymandering. Cartoonists, especially, have a field day in making 'snakes', 'turkey foots', 'frying pans,' and the like, emerge from sets of revised districts. 'Checker-board square' is the assumed ideal. Any significant deviations from such symmetry are deemed unclean and unjustifiable.

It may come as a surprise, therefore, to be told that this common understanding is highly unfortunate. It is unfortunate because it tends to preclude intelligent discussion of unfair partisan practices and results, in districting. It immediately casts attention in the wrong direction - toward superficialities of shape and size, rather than toward the political realities of district composition. These realities, as Robert Luce has so aptly observed, turn on the 'accident of sleeping place.' It is the particular nature of this 'accident of sleeping place' for a party's supporters which determines whether a set of symmetrical districts is fair, or is a clean-sweep gerrymander for that party. Not to perceive this is to confuse form with function, and even to prevent the asymmetrical designs dictated by considerations of political balance and minority representation, and dictated as well by normal preferences for giving some recognition to natural boundaries and political subdivi-

sions."[24]

He added:

> "Gerrymandering is discriminatory districting. It equally covers squiggles, multimember districting, or simple nonaction, when the result is racial or political malrepresentation."[25]

The legislative plan plainly is within the constitutional limits of population equality imposed by Baker v. Carr and its progency; with a single exception is free of any invidious discrimination either political or racial; and is composed of districts meeting all requirements of the Maryland Constitution when they are viewed in the light of (a) the geographical irregularities of the State and its political subdivisions; (b) the uneven population distribution in the State, and (c) the necessity to balance the sometime conflicting, competing or incompatible equities arising under Sections 1, 2 and

3 of Article III of the Constitution of Maryland.

Accordingly, it is recommended that the legislative plan be approved in all respects save District 44 (and by necessity 43) as to which the changes indicated by Appendix C are recommended.

I believe that any other course would prove chaotic.

Respectfully submitted,

W. Albert Menchine
Special Master

Footnotes to the Report of the Special Master

[1]The difference between the Advisory Committee Plan and the Legislative Plan will be discussed *infra* under the heading Miscellaneous Petition 3.

[2]At page 266; *compare*:
Colegrove v. Green, 328 U.S. 549 (1946);
MacDougall v. Green, 335 U.S. 281;
South v. Peters, 339 U.S. 276;
Anderson v. Jordan, 343 U.S. 912.

[3]At page 284.

[4]At page 285.

[5]At page 287.

[6]At page 267.

[7]Gray v. Sanders, 372 U.S. 368 (1963) (struck down under the 14th Amendment's Equal Protection Clause Georgia's county unit system for nomination of United States Senate candidates and candidates for statewide office).

[8]Westberry v. Sanders, 376 U.S. 1 (1963) (struck down congressional redistricting because "the command of Article 1, Section 2, that Representatives be chosen 'by the people of the several States,' means that as nearly as practicable one man's vote in a congressional election is to be worth as much an another's."

[9]The remaining five cases decided with *Reynolds*, *supra*, were WMCA v. Lomenzo, 377 U.S. 633 (1964) (invalidating New York's legislative apportionment plan, under

which 37.5% of the population lived in districts electing a majority of the state assembly, and 38.1% in districts electing a majority of the senate. The Court stated at page 635: "However complicated or sophisticated an apportionment scheme might be, it cannot, consistent with the Equal Protection Clause, result in a significant undervaluation of the weight of the votes of certain of a state's citizens merely because of where they happen to reside."); Maryland Committee v. Tawes, 377 U.S. 656 (1964) (holding unconstitutional Maryland's apportionment procedures, pointing out that 14.1% of the population would elect a majority of the senate, and 24.7% would elect a majority of the house, and adding that "(Maryland's) reliance on the so-called federal analogy as a sustaining principle for the Maryland apportionment scheme...is clearly misplaced." at 675); Davis v. Mann, 377 U.S. 678 (1964) (striking down Virginia's apportionment procedures, holding that attempts to balance urban and rural power do not justify deviations from population equality, even if those deviations do not exceed those found in the composition of the Federal Electoral College); Roman v. Sincock, 377 U.S. 695 (1964) (rejecting Delaware's apportionment procedures, noting, however, that reapportionment does not lend itself to precise, mathematical formulas. Rather, the issue is whether any minor deviations that do occur are free from "any taint of arbitrariness or discrimination" at 709); Lucas v. Colorado General Assembly, 377 U.S. 713 (1964) (declaring unconstitutional a state Constitutional Amendment, which was adopted by the Colorado electorate in 1962, which provided for the apportionment of the State

House on the basis of population, but which essentially maintained the existing apportionment of the senate, made on the basis of factors other than strict equality of population. Said the Court:

> "An individual's constitutionally protected right to cast an equally weighted vote cannot be denied even by a vote of a majority of a State's electorate, if the apportionment scheme adopted by the voters
>
> fails to measure up to the requirements of the Equal Protection Clause. Manifestly, the fact that an apportionment plan is adopted in a popular referendum is insufficient to sustain the constitutionality or to induce a court of equity to refuse to act." At 736.

[10]Mahan v. Howell, supra, at 324-25.

[11]Article IV, §2, ¶3 of the New Jersey Constitution provides that Assembly districts shall be "as nearly compact...as possible."

[12]The only change suggested in Sub-District 14B (a 2-delegate district) is the removal of Montgomery County split precincts ED9-20 and 21 (population 1391), the effect of which would decrease the total sub-district population from 63,175 to 61,784.

[13]Petitioner Wiser is a former State Senator, defeated in the 1978 election, who concedes that he would like to be a senatorial candidate in the forthcoming election.

[14]See WMCA, Inc. v. Lomenzo, 238 F.Supp.

916 (S.D. N.Y. 1965), aff'd, per curiam, 382 U.S. 4, 86 S.Ct. 25, 15 L.Ed.2d 2 (1966) (holding that allegations of political gerrymandering do not present a justiciable issue); Russo v. Vacin, 582 P.2d 27 (7th Cir. 1976) (noting that force is added to the District Court decision in WMCA, Inc., supra, since it subsequently had become clear that lower federal courts are bound by summary actions of the Supreme Court, citing Hicks v. Miranda, 422 U.S. 334, 95 S.Ct. 2281, 45 L.Ed.2d 223 (1975); Farrell v. State of Oklahoma ex rel. Hall, 339 F.Supp. 73 (W.C. Okla. 1972), aff'd, 406 U.S. 939 (1972) (holding that the issue of political gerrymandering at least in single member districting is nonjusticiable.

[15]Burns v. Richardson, 384 U.S. 86 S.Ct. 1286 (1966), at 89, footnote 16 ("The fact that district boundaries may have been drawn in a way that minimizes the number of contests between present incumbents does not in and of itself establish invidiousness."); White v. Weiser, 412 U.S. 783, 791, 93 S.Ct. 2348, 2352, 37 L.Ed.2d 335 (1973) (recognition of incumbency concerns is not in itself unconstitutional); Davenport v. Apportionment Commission, 319 A.2d 718, 65 N.J. 125, (1973) (Citing White v. Weiser, supra). Contra, In Re Legislative Districting of General Assembly, 193 N.W.2d 784 (Iowa).

[16]See Appendix A Response to Special Master's request for "Reapportionment Litigation - Information" paragraph 3 and its accompanying attachment C. Appendix in original only.

[23]District 44, discussed, supra.

[24]Democratic Representation, Oxford University Press, 1968, p. 459.

HOUSE JOINT RESOLUTION NO. 32

By: Delegate Koss

Introduced and read first time:

February 2, 1982

Assigned to: Constitutional and

Administrative Law

Committee Report: Favorable

House action: Adopted

Read second time: February 5, 1982

RESOLUTION NO. _____

HOUSE JOINT RESOLUTION

A House Joint Resolution concerning

Legislative Districting Plan of 1982

FOR the purpose of incorporating certain technical changes into the plan for legislative districting presented by the Governor pursuant to Article III, Section 5, of the Constitution of Maryland;

providing that such changes are intended to remove certain ambiguities and to implement the intent underlying the Governor's plan; making an internal change within a legislative district to improve, in a Delegate district, access originally inadvertently limited by an unbridged body of water; providing that this Joint Resolution shall be effective as a plan within the meaning of Article III, Section 5, of the Constitution of Maryland only under certain circumstances; providing that this Joint Resolution does not preclude the enactment by the General Assembly of a subsequent Joint Resolution setting forth the boundaries of legislative districts; and generally relating to the establishment of legislative districts pursuant to Article III of the Constitution of Maryland.

BY repealing

Article 40 - General Assembly

Section 46, 47, 47½, 47A, 47B, and 47C
Annotated Code of Maryland
(1978 Replacement Volume and 1981 Supplement)
BY adding to
Article 40 - General Assembly
Section 46, 47, 47A, 47B, and 47C to be under the amended subtitle "Legislative Districting Plan of 1982"
Annotated Code of Maryland
(1978 Replacement Volume and 1981 Supplement)

SECTION 1. BE IT RESOLVED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section(s) 46, 47, 47½, 47A, 47B, and 47C, inclusive, of Article 40 - General Assembly, of the Annotated Code of Maryland be repealed.

SECTION 2. AND BE IT FURTHER RESOLVED, That section(s) of the

Annotated Code of Maryland read(s) as follows:

Article 40 - General Assembly

Legislative Districting Plan of (1973) 1982

46.

(A) The State of Maryland is divided into 47 Districts for the Election of members of the General Assembly of Maryland.

(B) Each Legislative District shall elect 1 Senator and 3 Delegates.

(C) Each Legislative District may be subdivided into 3 single member Delegate Districts or into 1 single member Delegate District and 1 multimember Delegate District.

(D) In any Legislative District which contains more than 2 counties or parts of more than 2 counties, and where Delegates are to be elected at large by the voters of

the entire District, a county, or part of a county, may not have more than 1 Delegate residing in that District.

(E) The descriptions of the Legislative Districts set forth in this subtitle, including all references to election districts, wards, precincts, streets, highways, and other designations, are to the geographical boundaries or other designations as they existed on June 1, 1981.

47.

The Composition of the 47 Legislative Districts is

(portions of Resolution describing boundaries of legislative districts outside of Montgomery County omitted)

(14) Legislative District 14 consists of:

(A) Delegate District 14A (single member delegate district):

(I) Montgomery County Election District 5, Precincts 2, 8, 15, 17 and 18;

(II) Montgomery County Election District 5, that part of Precinct 1 that is generally north of a line running along the center of Good Hope Road from New Hampshire Avenue a distance of 2,100 feet to an unnamed stream which is the western fork of another unnamed stream (both of which are generally known as the Good Hope Branch Tributary to the Paint Branch), thence in a southeasterly direction along the center of the western fork to the second unnamed stream, and thence along the center of the second unnamed stream to Paint Branch;

(III) Montgomery County Election District 8, Precincts 1 and 5;

(IV) Montgomery County Election District 8, that part of Precinct 2 that is south of a line running along the center of Brighton Dam Road from the eastern precinct boundary to the intersection with the municipal boundary of the municipal

corporation of Brookeville, thence along the northern municipal boundary of the municipal corporation of Brookeville in a generally westerly direction to Brookeville Road, thence along the center of Brookeville Road so far as is required to reach the western precinct boundary;

(V) Montgomery County Election District 8, that part of Precinct 6 that generally is east and north of a line running in a northwesterly direction along the center of Norwood Road from the southern precinct boundary to the intersection of Dr. Bird Road, thence continuing in a northwesterly direction along the center of Dr. Bird Road to Maryland Route 108; and

(VI) Montgomery County Election District 8, that part of Precinct 7 that is generally west of a line running along the center of New Hampshire Avenue from Maryland Route 108 to Gold Mine Road,

thence in a westerly direction along the center of Gold Mine Road to the boundary line of Precinct 2 of Election District 8; and

(B) Delegate District 14B (2 member delegate district):

(I) Howard County Election Districts 2 and 3 in their entirety;

(II) Howard County Election District 5, Precincts 2, 3, 4, 7, 8, 9, and 10;

(III) Howard County Election District 5, that part of Precinct 1 that is west and north of a line running along the center of Maryland Route 108 from Hall Shop Road to Guilford Road, thence along the center of Maryland Route 32 to the western boundary of Precinct 5 of Election District 5;

(IV) Howard County election Dis-

trict 5, that part of Precinct 5 that is north of a line running along the center of Maryland Route 32 from Maryland Route 29 to Cedar Lane;

(V) Montgomery County Election District 1 in its entirety;

(VI) Montgomery County Election District 8, that part of Precinct 2 that is north of a line running along the center of Brighton Dam Road from the eastern precinct boundary to the intersection with the municipal boundary of the municipal corporation of Brookeville, thence along the northern municipal boundary of the municipal corporation of Brookeville in a generally westerly direction to Brookeville Road, thence along the center of Brookeville Road so far as is required to reach the western precinct boundary;

(VII) Montgomery County Election District 8, that part of Precinct 7 that is north and east of a line running along the

center of New Hampshire Avenue from Maryland Route 108 to Gold Mine Road, thence in a westerly direction along the center of Gold Mine Road to the boundary line of

Precinct 2 of Election District 8;

(VIII) Montgomery County Election District 9, that part of Precinct 20 that is generally east of a line that runs along the municipal boundary of the municipal corporation of Gaithersburg from Gaithersburg-Laytonsville Road to Emory Grove Road;

(IX) Montgomery County Election District 9, that part of Precinct 21 that is generally east and south of a line running along the center of Strawberry Knoll Road from Emory Grove Road to Snouffer's School Road; and

(X) Montgomery County Election District 9, that part of Precinct 21 that is north of a line meandering in a

generally westerly direction along the center of Cabin Branch from Snouffer's School Road to Goshen Road.

(15) Legislative District 15 consists of:

(A) Montgomery County Election Districts 2, 3, 6, 11, and 12 in their entirety;

(B) Montgomery County Election District 4, Precincts 12 and 20;

(C) Montgomery County Election District 4, that part of Precinct 17 that is west of a line running along the center of Seven Locks Road from Postoak Road to Tuckerman Lane;

(D) Montgomery County Election District 4, that part of Precinct 25 that is south of the municipal boundary of the municipal corporation of Rockville;

(E) Montgomery County Election District 9, Precincts 9, 12, 17, 18 and 19;

(F) Montgomery County Election Dis-

trict 9, that part of Precinct 1 that is bounded by a line that runs along the center of North Summit Avenue from the boundary of Election District 9, Precinct 7 to the municipal boundary of the municipal corporation of Gaithersburg, thence runs in a generally westerly and northerly direction along the northern municipal boundary of the municipal corporation of Gaithersburg to Oden'Hal Avenue, and thence runs generally easterly along the existing boundary line between Precincts 1 and 7 of Election District 9 to North Summit Avenue;

(G) Montgomery County Election District 9, all of Precinct 5 except that part generally south and west of the municipal boundary line of the municipal corporation of Gaithersburg;

(H) Montgomery County Election District 9, all of Precinct 7 except that part generally west of a line running along the

center of Lost Knife Road between Montgomery Village Avenue and Oden'Hal Avenue;

(I) Montgomery County Election District 9, that part of Precinct 8 that is generally northwest of a line meandering in a generally westerly direction along the center of Great Seneca Creek from Interstate 270 to Clopper Road;

(J) Montgomery County Election District 9, that part of Precinct 11 that is not within the corporate boundaries of the municipal corporation of Gaithersburg;

(K) Montgomery County Election District 9, that part of Precinct 15 that is generally east of the municipal boundary of the municipal corporation of Gaithersburg;

(L) Montgomery County Election District 9, that part of Precinct 21 that is generally west of a line running along the center of Strawberry Knoll Road from Emory

Grove Road to Snouffer's School Road, thence running north along the center of Snouffer's School Road from Emory Grove Road to Cabin Branch, and thence meandering in a generally westerly direction along the center of Cabin Branch to Goshen Road; and

(M) Montgomery County Election District 10, Precincts 1 through 6, inclusive, 8, 9 and 11.

(16) Legislative District 16 consists of:

(A) Montgomery County Election District 4, Precincts 10, 13, and 18;

(B) Montgomery County Election District 4, that part of Precinct 17 that is east of a line running along the center of Seven Locks Road from Montrose Road to Tuckerman Lane;

(C) Montgomery County Election District 4, that part of Precinct 28 that is bounded on the west and north by the municipal boundary line of the municipal

corporation of Rockville, on the east by Route 355, and on the south by Montrose Road;

(D) Montgomery County Election District 7, Precincts 3, 4, 7 through 15, inclusive, 17 through 20, inclusive, and 22 through 31, inclusive;

(E) Montgomery County Election District 10, Precincts 7 and 10; and

(F) Montgomery County Election District 13, Precinct 38.

(17) Legislative District 17 consists of:

(A) Montgomery County Election District 4, Precincts 2 through 9, inclusive, 11, 14, 15, 16, 21 through 24, inclusive, 26, 27, and 29;

(B) Montgomery County Election District 4, that part of Precinct 1 that is west of a line that runs along the center of Rock Creek;

(C) Montgomery County Election Dis-

trict 4, that part of Precinct 25 that is within the municipal boundary of the municipal corporation of Rockville;

(D) Montgomery County Election District 4, all of Precinct 28 except that which is bounded on the west and north by the municipal boundary line of the municipal corporation of Rockville, on the east by Route 355, and on the south by Montrose Road;

(E) Montgomery County Election District 9, Precincts 2, 3, 6, 13, and 16;

(F) Montgomery County Election District 9, all of Precinct 1 except that bounded by a line that runs along the center of North Summit Avenue from the boundary of Election District 9, Precinct 7 to the municipal boundary of the municipal corporation of Gaithersburg, thence runs in a generally westerly and northerly direction along the northern municipal boundary of the municipal corporation of

Gaithersburg to Oden'Hal Avenue, and thence runs generally easterly along the existing boundary line between Precincts 1 and 7 of Election District 9 to North Summit Avenue;

(G) Montgomery County Election District 9, that part of Precinct 5 generally south and west of the municipal boundary line of the municipal corporation of Gaithersburg;

(H) Montgomery County Election District 9, that part of Precinct 7 generally west of a line running along the center of Lost Knife Road between Montgomery Village Avenue and Oden'Hal Avenue;

(I) Montgomery County Election District 9, that part of Precinct 8 that is generally southeast of a line meandering in a generally westerly direction along the center of Great Seneca Creek from Interstate 270 to Clopper Road;

(J) Montgomery County Election Dis-

trict 9, that part of Precinct 10 that is within the municipal boundary of the municipal corporation of Gaithersburg;

(K) Montgomery County Election District 9, that part of Precinct 11 that is within the municipal boundary of the municipal corporation of Gaithersburg;

(L) Montgomery County Election District 9, that part of Precinct 15 that is generally west of the municipal boundary of the municipal corporation of Gaithersburg;

(M) Montgomery County Election District 9, that part of Precinct 20 that is within the municipal boundary of the municipal corporation of Gaithersburg; and

(N) Montgomery County Election District 13, that part of Precinct 26 that is generally north and west of a line that runs along the center of Cedar Lane in a generally easterly direction from the boundary of Precinct 38 of Election District 13 to Summit Avenue, thence in a

northerly direction along the center of Summit Avenue to the existing boundary between Precincts 26 and 40 of Election District 13.

(18) Legislative District 18 consists of:

(A) Montgomery County Election District 7, Precincts 1, 2, 5, 6, 16, 21, and 32;

(B) Montgomery County Election District 13, Precincts 3, 7, 16, 17, 24, 25, 27 through 32, inclusive, 34, 36, 39, 40, 44, 53, 58, 59, and 61;

(C) Montgomery County Election District 13, that part of Precinct 14 that is generally north and west of a line that runs along the center of Alton Parkway from Georgia Avenue to Dale Drive, thence in a southeasterly direction along the center of Dale Drive to Colesville Road;

(D) Montgomery County Election District 13, that part of Precinct 26 that is generally east of a line that runs along

the center of Cedar Lane in a generally easterly direction from the boundary of Precinct 38 of Election District 13 to Summit Avenue, thence in a northerly direction along the center of Summit Avenue to the existing boundary between Precincts 26 and 40 of Election District 13; and

(E) Montgomery County Election District 13, that part of Precinct 49 that is generally west and south of a line that runs along the center of Martin Avenue in a northerly direction to Henderson Avenue, thence in an easterly direction along the center of Henderson Avenue to Bernard Drive, thence in a northerly direction along the center of Bernard Drive to Georgian Woods Place, thence along the center of Georgian Woods Place to the intersection of Georgian Woods Place and Georgia Avenue.

(19) Legislative District 19 consists of:

(A) Montgomery County Election Dis-

trict 4, Precinct 19;

(B) Montgomery County Election District 4, that part of Precinct 1 that is east of a line that runs along the center of Rock Creek;

(C) Montgomery County Election District 8, Precincts 3 and 4;

(D) Montgomery County Election District 8, that part of a Precinct 6 that is generally west and south of a line running in a northwesterly direction along the center of Norwood Road from the southern Precinct boundary to the intersection of Dr. Bird Road, thence continuing in a northwesterly direction along the center of Dr. Bird Road to Maryland Route 108;

(E) Montgomery County Election District 9, Precincts 4 and 14;

(F) Montgomery County Election District 9, that part of Precinct 10 that is not within the municipal boundary of the municipal corporation of Gaithersburg;

(G) Montgomery County Election District 13, Precincts 1, 2, 11, 19, 20, 33, 35, 37, 42, 43, 45, 46, 48, 51, 52, 54 through 57, inclusive, and 60; and

(H) Montgomery County Election District 13, that part of Precinct 49 that is generally east of a line that runs along the center of Martin Avenue in a northerly direction to Henderson Avenue, thence in an easterly direction along the center of Henderson Avenue to Bernard Drive, thence in a northerly direction along the center of Bernard Drive to Georgian Woods Place, thence along the center of Georgian Woods Place to the intersection of Georgian Woods Place and Georgia Avenue.

(20) Legislative District 20 consists of:

(A) Montgomery County Election District 5, Precincts 3 through 7, inclusive, 9 through 14, inclusive, and 16;

(B) Montgomery County Election Dis-

trict 5, that part of Precinct 1 that is generally south of a line running along the center of Good Hope Road from New Hampshire Avenue a distance of 2,100 feet to an unnamed stream which is the western fork of another unnamed stream (both of which are generally known as the Good Hope Branch Tributary to the Paint Branch), thence in a southeasterly direction along the center of the western fork to the second unnamed stream, and thence along the center of the second unnamed stream to Paint Branch;

(C) Montgomery County Election District 13, Precincts 4, 5, 6, 8, 9, 10, 12, 13, 14, 18, 21, 22, 23, 41, 47, and 50; and

(D) Montgomery County Election District 13, that part of Precinct 14 that is generally south and east of a line that runs along the center of Alton Parkway from Georgia Avenue to Dale Drive, thence in an easterly direction along the center of Dale Drive to Colesville Road.

(portions of Resolution describing boundaries of legislative districts outside of Montgomery County omitted).

47A.

For purposes of elections, the provisions of this subtitle shall be applicable to elections for members of the General Assembly beginning with the Primary and General Elections of 1982 and, for purposes of representation, shall be applicable beginning with the second Wednesday of January, 1983.

47B.

All provisions of this Article, and all other laws or parts of laws, public general or public local, inconsistent with the provisions of this subtitle, are repealed to the extent of any such inconsistency.

47C.

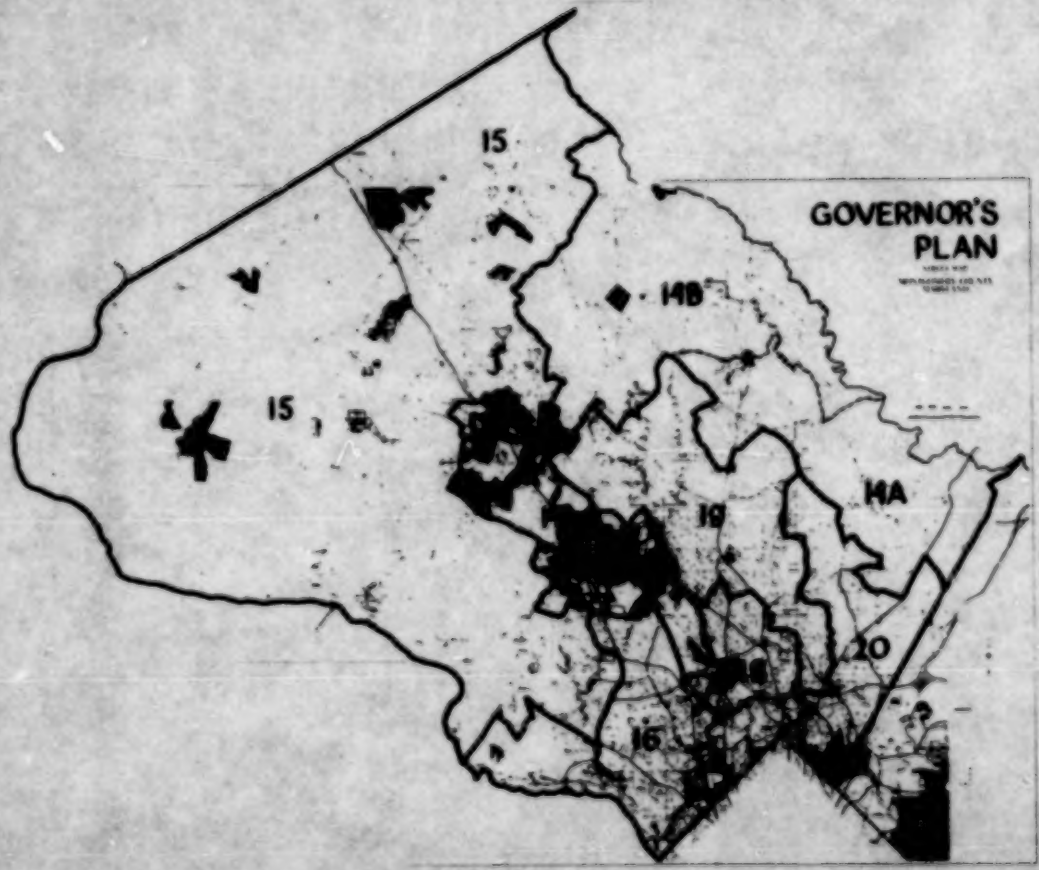
If any part of this subtitle, includ-

ing any section or subsection or portion of it, shall be held to be unconstitutional or invalid for any reason, the unconstitutionality or invalidity may not affect the remaining parts of this subtitle. It is the intention that the remaining parts of this subtitle would have been enacted into law if that unconstitutionality or invalidity had been known. To this end, all parts of this subtitle are declared to be severable.

SECTION 3. AND BE IT FURTHER RESOLVED, That this Joint Resolution is intended to remove ambiguities from, and implement the underlying intent of, the plan for legislative districting presented by the Governor pursuant to Article III, Section 5, of the Constitution of Maryland and to make an internal change within a legislative district to improve, in a Delegate district, access originally

inadvertently limited by an unbridged body of water.

SECTION 4. AND BE IT FURTHER RESOLVED, That this Joint Resolution shall not be construed to preclude the adoption of any other plan setting forth the boundaries for legislative districts pursuant to the provisions of the fourth and fifth sentences of Article III, Section 5, of the Constitution of Maryland and shall be effective as a plan within the meaning of those provisions only if no other plan is adopted by the General Assembly pursuant to those provisions by the 45th day of the 1982 regular Session.


GOVERNOR'S
PLAN
15
15
14B
14A
19
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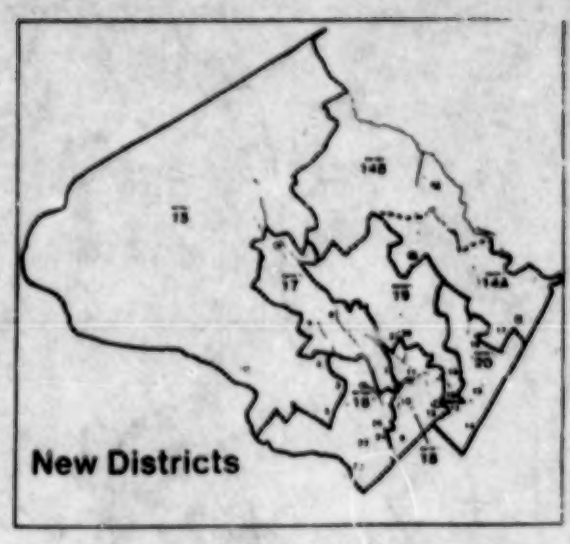
16

The small numbers on the New Districts map denote the 25 incumbents' residences:



New Districts

Petitioner's Exhibit #13

POPULATION OF MONTGOMERY COUNTY AND
RESIDENCY OF INCUMBENT LEGISLATORS
NORTH AND SOUTH OF RANDOLPH ROAD

Randolph Road is (aside from the Capital Beltway) the principal cross County highway in Montgomery County.

Known as Cherry Hill Road for a short distance on the eastern portion near the Prince George's County line and as Montrose Road for about 2.4 miles west of Rockville Pike, it crosses the County for a total distance of approximately 14 miles.

The eastern portion is a well travelled two-lane road running about 3.9 miles from the Prince George's County line to New Hampshire Avenue and providing access via Calverton Boulevard to Interstate 95 at its Calverton Beltsville interchange.

From New Hampshire Avenue to Georgia

Avenue (2.9 miles), it is a six-lane divided highway. From Georgia Avenue to its western terminus at Seven Locks Road (7.2 miles), it is a four-lane highway (divided for 2.6 miles from Georgia Avenue to just west of Viers Mill Road). Near its western end, it provides access with Interstate 270 by an interchange and terminates a short distance beyond that interchange at Seven Locks Road in Western Montgomery County.

As virtually the only cross County Road (aside from the Capital Beltway which is located farther south generally running through areas that are considered relatively older parts of Montgomery County), it provides a natural boundary between the older and new developments of Montgomery County.

Its significance as a cross County highway and a natural boundary between the northern and southern parts of the County

is attested to by the fact that the Montgomery County Department of Transportation uses it as the dividing line on the two Traffic Volume Maps it prepares for highways in the County.

Randolph Road as a natural boundary is also exemplified by the fact that almost for its entire length, it is the boundary line between 22 precincts in Montgomery County. Randolph Road goes through an additional three precincts. These three precincts (13-25, 13-36 and 13-61) are ones in which the residential areas on both sides are part of the same residential development and have very close community ties and a division would have left small portions of the precincts subdivided by parks or major highways.

A comparison of the proportion of the population and the residences of the incumbent legislators north and south of Randolph Road (and an area extending

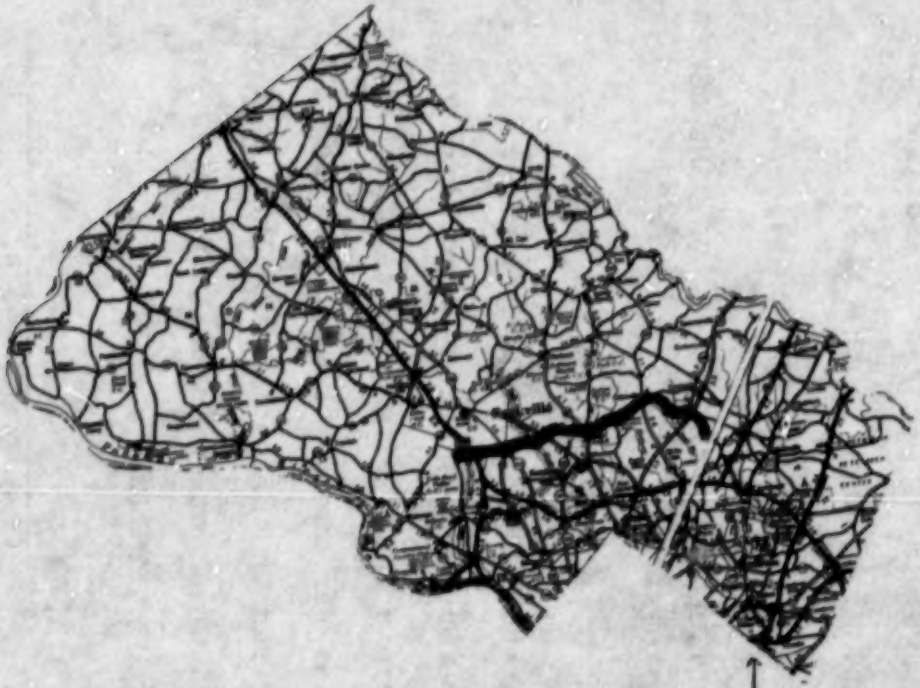
westerly, from its terminus in western Montgomery County) as compared to the entire area of the six legislative districts located wholly within Montgomery County (thus excluding District 14A) under the Governor's Plan is as follows:

	Population	Senators	Delegates
North Area	43%	0 (0%)	5 (27%)
South Area	57%	6 (100%)	13 (73%)

The area north of Randolph Road contains most of the areas of population growth during the 1970's and most of the areas of future projected population growth.

A map showing the general route of Randolph Road across Montgomery County is attached as Appendix I.

Montgomery County showing location of Randolph Road



IN THE COURT OF APPEALS OF MARYLAND

In The Matter Of Legislative Districting	:	September Term
C. LAWRENCE WISER	:	1982
Petitioner	:	
vs.	:	Miscellaneous
HARRY R. HUGHES,	:	No. 2
Respondent	:	

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that C. Lawrence Wiser, the petitioner in the above captioned case, hereby appeals to the Supreme Court of the United States from the final Per Curiam order dismissing the Petition entered in this action on June 4, 1982.

This action is taken pursuant to 28 U.S.C. §1257(2).

C. Lawrence Wiser
Petitioner
Suite 400, 10605 Concord St.
Kensington, Maryland 20895
301-949-7870

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Appeal to the Supreme Court of the United States was mailed, postage prepaid, this 30th day of August, 1982, to W. Shepherdson Abell, Thomas F. Hogan, and Marianne K. Renjilian of Furey, Doolan, Abell & Hogan, 8401 Connecticut Avenue, Chevy Chase, Maryland 20815; Stephen H. Sachs, Diana G. Motz, Robert A. Zarnoch, Mary N. Humphries, and Linda H. Lamone of the Office of the Attorney General at 1400 One South Calvert Building, Baltimore, Maryland 21202; Stanley D. Abrams, Attorney for Bruce Goldensohn at Levitan, Ezrin, West, Weinstein & Kerxton, 7315 Wisconsin Avenue, Suite 760 North, Bethesda, Maryland 20814; and Roger W. Titus and Sondra Harans Block, Attorneys for the City of Rockville, P.O. Box 1906, Rockville, Maryland 20850.

C. Lawrence Wiser